

**AGREEMENT REGARDING CALFED CATEGORY III FUNDS
BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
THE NATIONAL FISH AND WILDLIFE FOUNDATION AND CALFED**

This agreement is made and entered into by and between the California Department of Water Resources (DWR) on behalf of the Resources Agency, the National Fish and Wildlife Foundation (NFWF), and CALFED collectively known as the "Parties."

WITNESSETH:

WHEREAS, in a cooperative effort to protect and enhance the ecosystem of the Bay-Delta, representatives of State and Federal governments and interested parties from the urban, agricultural, and environmental communities agreed, on December 15, 1994, to a Statement of Principles on Bay-Delta Standards Between the State of California and the Federal Government (Bay-Delta Accord);

WHEREAS, the Bay-Delta Accord, in part, provides for the implementation of "Category III Measures" which are focused on improving specific non-outflow related factors in the Bay-Delta ecosystem;

WHEREAS, Proposition 204, approved by the voters of California in November 1996, appropriated \$60 million to fund "Category III" activities (codified in Article 3, Chapter 4, Division 24 of the California Water Code, and referred to as the "Category III Program" in this agreement) to the California Resources Agency, and provided that the program be administered in accordance with procedures established by CALFED;

WHEREAS, the California Resources Agency has entered into an Interagency Agreement with DWR (attached hereto as Exhibit _____) which provides, inter alia, that DWR act as the fiscal agent for the Category III Program;

WHEREAS, in 1997, the Resources Agency selected certain ecosystem restoration proposals to fund based on the recommendation of CALFED;

WHEREAS, in 1998, CALFED expects to recommend to the Resources Agency for approval additional proposals for funding which would obligate the remaining Category III funds;

WHEREAS, the CALFED program is a programmatic planning process which includes federal and state agencies as described in Water Code Section 78501 and receives public input from the Bay-Delta Advisory Council (BDAC) and the Ecosystem Roundtable, a subcommittee of BDAC;

WHEREAS, NFWF is a non-profit conservation organization established by an Act of Congress (P.L. 98-244, as amended 16 U.S.C. 3701, et seq.) whose purpose is to encourage, accept, and administer private gifts for the benefit of, or in connection with, the activities and services of the U.S. Fish and Wildlife Service, and to undertake and conduct such activities, including the administration of grant programs and contract administration, as will further the conservation and management of the fish, wildlife, and plant resources of the United States for the present and future generations of Americans;

WHEREAS, NFWF's mission and its experience in performing grant and contract administration services for federal agencies makes it the appropriate organization to provide such services involving the disbursement of Category III funds; and

NOW, THEREFORE the parties agree as follows:

I. AUTHORITY

A. California Department of Water Resources

The California Resources Agency (Agency) has the authority to enter into and carry out provisions of this Agreement to the extent that it involves the Proposition 204 \$60 million Category III funds. (Water Code §78536.5) Through the

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Interagency Agreement (Ex. ____), Agency has delegated to DWR the authority to act as fiscal agent of these Category III funds, and to enter into this agreement with NFWF. (Govt. Code sections 11256 et seq.)

B. CALFED

The Agency has delegated to the CALFED Bay-Delta Program the authority to administer the Category III Program and other responsibilities as set forth in the Letter of Agreement dated _____. For purposes of this agreement, CALFED means the consortium of state and federal agencies defined in Water Code Section 78501, and its successor entities.

C. National Fish and Wildlife Foundation

The Executive Director of the NFWF has the authority to enter into and carry out the provisions of this agreement pursuant to a resolution duly adopted by the Board of Directors of the NFWF. (Attached as Exhibit XX)

II. PURPOSE

This Agreement is entered into by DWR, NFWF and CALFED for the purpose of administering and disbursing Category III Program funds for projects when recommended by CALFED and approved by the Resources Agency. The amount of this contract is for a maximum amount not to exceed \$30 million which includes funds for NFWF administrative costs and for recipient agreements, which is defined in Section IV of this Agreement.

III. TERM

This Agreement shall commence upon the date when both parties, the Director of DWR or his designee and the Executive Director of the NFWF, have signed the agreement, but shall not become effective until approved by the Department of

National Fish and Wildlife Foundation
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General Services. This Agreement shall expire three years from the effective date unless extended by the parties, in writing, or unless terminated by any party pursuant to the terms of this Agreement.

IV. OBLIGATION AND SERVICES

A. NFWF

NFWF, pursuant to this Agreement and in accordance with the Administrative Budget and the Task Order Budget, will be responsible for administering up to \$30 million of Category III funds in order to facilitate successful implementation of Category III Program projects. Both the Administrative Budget and the Task Order Budget must be approved by CALFED prior to authorization of disbursement of any funds. Upon execution of this Agreement by the parties the NFWF will:

1. Act as contract administrator with specifically defined responsibilities listed below. The contract administrator(s) for NFWF shall be _____; NFWF may change the contract administrator(s) by written notice to DWR. The contract administrator(s) responsibilities include:

a) Preparation of a Task Order Budget based on the Task Orders received from CALFED. CALFED will provide a Task Order for each project assigned to NFWF to administer. The Task Order Budget will include estimates for the funding needed by NFWF on a quarterly basis to support Recipient Agreement invoices. The Task Order Budget will serve as the basis for DWR to transfer funds into the Escrow Account, as described in Section VI.

b) Preparation of an Administrative Budget for up to 3 percent of the Task Order Budget. The Administrative Budget will estimate the administrative expenses for NFWF on a quarterly basis and for the term of the contract, and will serve as the basis for DWR to transfer funds into the Escrow Account.

- c) Submittal of the Task Order Budget and Administrative Budget to CALFED and DWR for review and approval.
 - d) Administration and management of each approved project assigned to NFWF to ensure timely and satisfactory completion of the task order for that project.
 - e) Assist in problem-solving and dispute resolution with the parties to the recipient agreements.
 - f) Enter into a standard agreement with project applicants (hereinafter "Recipient Agreement") to implement approved projects upon receipt of a NFWF Task Order from CALFED for each Category III project assigned to NFWF for administration. In general, each Task Order will identify the maximum funding level, and the term and scope for each Recipient Agreement. (A sample standard Recipient Agreement and a sample NFWF Task Order are attached as Exhibits ____ and ____, respectively, and are incorporated herein by reference.)
 - g) Submit for review and obtain CALFED approval upon completion of significant deliverables as identified in each Task Order. Payment of invoices for those significant deliverables shall also be subject to approval of CALFED.
 - h) Notify CALFED and obtain CALFED approval of any proposed amendments which, as identified in each NFWF Task Order, augment the budget of any Recipient Agreement, extend the term of any Recipient Agreement or substantially changes the scope or quantity of the work to be performed under any Recipient Agreement.
2. Maintain open communication with CALFED on a routine basis to summarize project status and problems or concerns.

3. Provide written quarterly reports to CALFED which include a) the fiscal status of each recipient agreement, b) completion of tasks or phases of work in each recipient agreement, c) identification of any significant issues pertaining to each recipient agreement, d) summary of administrative expenditures, and (e) adjusted Administrative Budget and Task Order Budget which reflect information from newly executed or amended Recipient Agreements and Task Orders.

4. Maintain or cause to be maintained financial records and act as the fiscal manager for the contracts the NFWF administers pursuant to this Agreement. Provide the same financial information to DWR on a quarterly basis as described above in IV. 3(a) (d) and (e).

5. In cooperation with DWR, enter into an Escrow Agreement with an Escrow Agent acceptable to DWR, and escrow terms approved by DWR and CALFED.

6. Authorize disbursements pursuant to the terms of the Escrow Agreement established by paragraph VI of this Agreement.

7. Promptly notify and consult with CALFED regarding problems, disputes, claims, actions or litigation with recipients. In cooperation with CALFED, NFWF shall work with the recipients to resolve problems, disputes, claims, actions, or litigation.

8. As directed by CALFED, assist CALFED in a technical advisory role, in developing and administering future requests for proposals, including proposal format and requirements for applicants.

B. California Department of Water Resources

Upon execution of this Agreement by the parties, the DWR will:

1. Enter into an Escrow Agreement with NFWF which includes Escrow Instructions approved by DWR and CALFED.

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2. As set forth in the Interagency Agreement with the Agency, DWR will act as the fiscal agent for the Category III Program funds.

C. CALFED

1. As set forth in the Letter of Agreement with Agency, CALFED shall provide program oversight over the NFWF contract.

D. AGENCY

1. Upon execution of this Agreement by the parties, the Agency shall retain the right to enforce its rights under this contract.

2. The Agency will assume the responsibility to defend any claims, lawsuits, or administrative actions involving Recipient Agreements. The Agency retains the right to seek indemnification from NFWF for all costs incurred by the Agency or DWR for any claims, lawsuits, or administrative actions involving Recipient Agreements which are caused by or arise out of the negligent or other tortious acts or omissions of NFWF or the failure by NFWF to perform its contractual obligations. This remedy is not exclusive and does not preclude the Agency, or DWR from seeking other available remedies to enforce NFWF's obligations under this Agreement.

V. COMPENSATION

A. Except as provided in subsection B below, in consideration for the services provided by the NFWF pursuant to this Agreement, NFWF will receive an administrative reimbursement not to exceed three percent (3%) of the total amount budgeted for all Task Orders to be administered by the NFWF. The NFWF shall be paid in arrears for services already performed. For the convenience of DWR and

NFWF, payment of the administrative costs (except for the first quarter expenses) will be prorated over the term of this Agreement and will be paid in accordance with the Administrative Budget. However, in consideration of the higher first quarter costs associated with finalizing the Recipient Agreements, NFWF will be paid for their actual expenses incurred in the first quarter based on invoices submitted to DWR. Ten percent (10%) of the total administrative reimbursement shall be withheld pending satisfactory completion of the terms of this Agreement.

B. In the event of early termination of a NFWF Task Order, administrative reimbursements associated with that NFWF Task Order shall cease as of the effective date of the task order's termination. NFWF shall promptly provide CALFED and DWR with an updated Administrative Budget which reflects the reductions in administrative reimbursements prior to submission of the next payment by DWR is due. DWR agrees to reimburse NFWF for all reasonable expenses incurred to the effective date of termination plus any expenses agreed to by CALFED in advance of termination.

VI. ESCROW AGREEMENT

A. Agreement Terms.

1. NFWF shall establish an interest bearing escrow account to facilitate the administration of this Agreement. NFWF shall be responsible for overseeing the escrow account. NFWF shall choose an escrow agent, which agent shall be subject to the approval of DWR. NFWF shall obtain the approval of the terms of the Escrow Agreement from both DWR and CALFED. The terms of the escrow agreement shall be consistent with this agreement and the sample Recipient Agreements.

B. Escrow Account.

1. Upon approval of this agreement by each party, DWR shall deposit sufficient Category III Program funds, up to \$30 million into the Escrow Account to fund the Administrative Budget and Task Order Budget. These funds shall remain the property of the State until disbursed.

2. DWR and NFWF shall have the authority to authorize payments in arrears from the escrow account to the recipients for work which is completed and invoiced pursuant to the Recipient Agreements; provided, that should CALFED inform NFWF that performance on a task order is not satisfactory, NFWF shall immediately withhold any further payments under that task order until CALFED has notified NFWF in writing to resume payments.

3. DWR shall have the authority to authorize payment in arrears from the escrow account for NFWF compensation invoiced and approved by CALFED consistent with the Administrative Budget and pursuant Section V of this agreement.

4. Interest will accrue in the escrow account and will remain in that account until disbursed in accordance with the Escrow Agreement.

5. In the case of termination, any and all unobligated monies in the escrow account shall be returned by the escrow agent to DWR within 30 days after the termination date.

C. Deposits. NFWF shall file documentation with the escrow agent including, but not limited to:

1. A copy of this Agreement.
2. A copy of all Recipient Agreements between the NFWF and the successful RFP applicants.
3. A copy of the RFP.
4. A copy of the escrow instructions approved by DWR and CALFED.

D. Costs and Fees. Escrow costs and fees, if any, shall be charged to the Escrow Account.

VII. AMENDMENT AND TERMINATION

Any amendments to this Agreement will become effective upon being reduced to a written instrument, signed by the Parties, and approved by the California Department of General Services. This Agreement may be terminated by either Party with reasonable cause upon ninety (90) days written notice to the other party; such written notice shall include adequate justification for termination. Prior to termination the parties agree to meet and make a good faith effort to resolve the cause of termination. Upon termination, NFWF's role, responsibilities, and benefits as a party to the recipient agreements shall be assigned to Agency or its designee.

VIII. AUDIT ON FIVE DAYS NOTICE

DWR, and CALFED, as Agency's contract administrator, shall each have the right, on five (5) days notice, to audit NFWF's Category III Program project files, invoices, and all supporting documentation for purposes of compliance with this Agreement during the term of this Agreement and for a period of three years following completion of projects covered under this Agreement.

IX. JURISDICTION AND VENUE

The parties agree that this Agreement shall be deemed a contract under the laws of the State of California, and for all purposes shall be interpreted in accordance with laws of the State of California. If there is a dispute with respect to this Agreement, the parties hereby agree that the exclusive jurisdiction of any action regarding the Agreement shall be the courts of the State of California and that the exclusive venue of any such action shall be Sacramento County, California.

X. JOINT DRAFTING

The Agency and the NFWF have participated in the negotiating and drafting of this Agreement. This Agreement fully expresses the understanding of the Agency and the NFWF, and is the total Agreement between the Agency and the NFWF, as to the subject matter covered in this Agreement.

XI. NOTICES

The following individuals shall represent the parties hereto for notice purposes. Notices to be given hereunder shall be made in writing by delivering the same in person, by mail, or by telecopy (fax). Notices shall be effective upon receipt of each individual at the addresses shown below.

A. DWR

1416 Ninth Street, Room ____

National Fish and Wildlife Foundation
Contract Number _____

Sacramento, CA 95814

Attention: Chet Winn

B. National Fish and Wildlife Foundation

Local Contact???

C. CALFED

1416 Ninth Street , Suite 1155

Sacramento , CA

Attention: Kate Hansel

XII. STANDARD CLAUSES

A copy of the standard clauses are attached hereto and incorporated herein by this reference. The NFWF agrees to fully comply with the standard clauses.

IN WITNESS HEREOF, the following authorized representatives have executed this Agreement:

National Fish and Wildlife Foundation
Contract Number _____

Department of Water Resources

by David Kennedy, Director

Date

National Fish and Wildlife Foundation

by Amos Eno, Executive Director

Date

CALFED

by Lester A. Snow, Executive Director

Date

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EXHIBIT __

ELEMENTS FOR TASK ORDER AGREEMENT

1. Project #
2. Project title
3. Contractor Name
4. Contact persons for Contractor
5. Description of scope of work to be undertaken
6. Category III proposal, Technical Review Team Assessment Form (as attachments)
7. Term
8. Significant deliverables to be provided to CALFED for review and approval
9. Maximum payable
10. Special funding arrangements, including cost-sharing, if applicable

Signed:

CALFED

NFWF

Title:

Date:

EXHIBIT _____

RECIPIENT AGREEMENT

NOT INCLUDED IN THIS PACKAGE